Written evidence submitted by Mr Mike Guilfoyle

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This brief written submission is sent in a personal capacity. I previously worked as a Probation Officer in London for twenty years and have retained membership of the Probation Union Napo as a Professional Associate Member. I remain an active campaigner, writer and book reviewer on issues related to criminal justice and probation. I am also a member of the Centre for Crime and Justice Studies -CCJS. I was appointed as a Magistrate in October 2014 for the SE London local Justice Area. I also undertake mentoring work with ex-offenders for a Third Sector Charity. My submission to this Inquiry is prompted by my specific professional concerns regarding the Criminal Courts Charge, in particular the manner of its introduction, its implementation and what I would suggest to the committee is the manifestly adverse impact that it is having on the fair and just administration of local justice.

2/
The timing of the Statutory Instrument (SI) which introduced the charge occurring as it did immediately prior to the dissolution of the last parliament was introduced during election purdah so afforded very limited opportunity for the SI to be debated in Parliament. The resultant lack of effective scrutiny was subsequently criticised by the House of Lords Secondary Legislation Scrutiny Committee (report June 2015) and the manner of its introduction therefore appeared underhand, poorly communicated to sentencers and due to its hurried parliamentary passage redolent of some of the more populist and poorly evidenced policy measures of the former Justice Secretary. The charge has been characterised by a Ministry of Justice factsheet somewhat disingenuously as an add-on administrative charge to contribute towards the running of the criminal courts (when research evidence would suggest that many defendants view the imposition of penal fines/costs/charges as an undifferentiated judicial sanction (O’ Malley 2009)

3/
Whilst it is proper that due consideration is given to requiring convicted defendants appearing in criminal courts to contribute in some fashion towards the costs of their prosecution according to their means. The imposition of a non-discretionary, flat and substantial charge payable regardless of the defendants’ means or indeed the actual costs of the case is manifestly unfair. I have witnessed this first hand as a serving Magistrate when as part of a sentencing bench defendants, from all the information before the court, are deemed to be indigent, mentally unwell and destitute are subject to its provisions.

In one case, an impecunious defendant had according to defense representations resorted to theft (Shoplifting) amount of goods stolen was under £20, it was noted that the defendant was without visible means of support due to having being sanctioned by the DWP and benefits withheld. The imposition of the charge as an additional penalty was not only disproportionate to the seriousness of the offence but given the parlous circumstances of the defendant highly unlikely to be recovered. Although various methods for monetary
repayment are offered to defendants, this form of hire-purchase justice (there is a two year timeframe for repayment) is I would argue more likely to lead to higher levels of fine default. Additional prosecution costs (albeit reduced) and the mandatory Victim Surcharge were also imposed in this instance. This is clearly contrary to the basic legal principle that the gravity of the punishment imposed should be proportionate to the seriousness of the offence committed.

4/

There is a clear and legitimate concern that the absence of any judicial discretion or mechanism for the court to take into account individual means, when as noted above many of the defendants appearing before the courts are drawn from some of the most disadvantaged communities in the country, the London Borough of Lewisham (One of four boroughs within the courts jurisdictional area) was rated as the 31st most deprived local Authority in England (IMD 2010) This represents I would contend a troubling and morally indefensible judicial measure that I would argue debases the ‘currency of justice’ insofar as the underpinning principle of everyone being considered as equal before the law is not supported by this form of monetized justice. The harmful impact of such charges on the families of defendants is most likely to be deleterious and might well result in ‘unintended criminogenic consequences’ insofar as increasing the likely risks of domestic and familial violence due to the financial pressures incurred (Magistrates Association 2015). That the charge is also imposed on those sentenced to terms of custody, who will then be encumbered with indebtedness on release from prison given the well documented ‘finance gap’ which can so often present as a hurdle to effective resettlement and dent the rehabilitative enterprise (Citizens’ Advice Bureau 2010), appears to negate some of the much lauded aims encapsulated in the Government’s Transforming Rehabilitation agenda.

5/

The amount of uncollected fine repayment in 2014/15 as quoted in a response to a recent parliamentary question was cited as being in excess of £571 million (PQ 7005 July 2015) and as such these charges are likely to be ineffective as a way of raising funds and most likely incur disproportionate costs in enforcing payments as many of the defendants most affected do not have the necessary means to repay such monies. Where is the destination of such money as raised by the charge - as one possible beneficiary is the Legal Aid Fund but as far as I can determine no definitive response has been forthcoming? A central aspect of the Transforming Summary Justice proposals is to seek to reduce unnecessary prosecution delays in magistrates courts thus obviating needless distress to victims and witnesses (CPS 2015) Might the added stimulus of an Administrative charge be better placed here to ensure such an outcome! Indeed the Impact Assessment on the charge undertaken by the Ministry of Justice highlights the likely probability of increased debt accrual and debt write off to HMCTS as well as £25 million to enforce - £5 million of which will be spent on additional prison places! (IA number: MOJ 223) Maybe the current Justice Secretary is sufficiently confident that this situation is remediable that he might want to share with the committee the business case for outsourcing the collection of court fines to preferred bidder US firm Concentrix whose strapline is ‘we measure our success by our clients success’!
There are legitimate concerns that defendants will be 'incentivized' to enter a guilty plea whether or not they have committed the offence they are charged with. From court based observations this remains very problematic given the number of unrepresented defendants appearing before the bench were the offence(s) are of a minor nature according to Sentencing Guidelines and can so often be viewed due to the added monetary charges exacted for finding of guilt as perversely in need of expeditious resolution, due to the significant differential in charges levied and imposed on those convicted after trial.

In another recent case before the bench, a female defendant convicted after trial whose employment was at risk of termination due to the conviction had the charge imposed at the standard rate for summary conviction. With dependent children and limited means (according to the means statement before the court) the additional costs could well prove too onerous, even with phased repayments, and add to the domestic pressures that resulted in the commission of the initial offence?

In conclusion, I would hope that the committee when it collates its evidence base and grounded findings is able to acknowledge the legitimate, informed and principled concerns expressed from those within/without the criminal justice system at the deleterious impact of this charge. That it pays due regard to the morale sapping loss to the effective and fair administration of local justice of the many experienced magistrates whose resignations, in protest at the charge, have peppered recent news reports (with many more considering whether to remain in post) So as to call for an urgent review of the charge, which if it is to be retained enables judges and magistrates discretion in its application (the preliminary findings relating to the increases of employment tribunal fees suggest that victims of discrimination and unfair dismissal are being discouraged from bringing meritorious claims) in other words as with this charge proper access to justice is being denied.

14 September 2015